

TENTATIVE RULINGS for CIVIL LAW and MOTION

August 20, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **American Express Centurian Bank v. Gill**
Case No. CV G 09-1489

Hearing Date: **August 20, 2009** **Department Fifteen** **9:00 a.m.**

Defendant Mike Gill's unopposed Motion to Quash Service of Summons and Complaint is **GRANTED**. (Code of Civ. Proc. §415.20, subd. (b); Declaration of Mike Gill, ¶¶ 1-2.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Baggarly v. DR Horton, Inc.**
Case No. CV CV 07-2737

Hearing Date: **August 20, 2009** **Department Fifteen** **9:00 a.m.**

Defendants' motion to compel inspection of land is **DENIED**. (Code Civ. Proc., §§ 2030.010 *et seq.*) An inspection of plaintiffs' home at this time will not lead to any relevant admissible evidence as to plaintiffs' claims that defendants negligently and intentionally misrepresented that the purchase price for their home, including all upgrades, was governed by the Cost-Plus 17% Plan contained in the April 2003 policy.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice is required.

TENTATIVE RULING

Case: **Neighborhood Partners, LLC v. Davis Area Cooperative
Housing Authority
Case No. CV CV 06-2183**

Hearing Date: **August 20, 2009** **Department Fifteen** **9:00 a.m.**

The unopposed petition to confirm arbitration award is **GRANTED**. The arbitrator's award of \$331,872.00 is confirmed. (Code of Civ. Proc. §§ 1285 *et seq.*; Petition to Confirm Arbitration Award, Attachment 8(c).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice is required.

TENTATIVE RULING

Case: **Ormiston v. California Youth Soccer Association
Case No. CV PO 08-236**

Hearing Date: **August 20, 2009** **Department Fifteen** **9:00 a.m.**

Defendant City of Davis' Motion For Judgment On The Pleadings is **DENIED**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii); Gov. Code, § 831.7, subds. (c)(1)-(3); Complaint ¶¶ Prem.L-1-4.) Plaintiffs state sufficient facts to state a cause of action against the City of Davis. (*Perez v. City of Los Angeles* (1994) 27 Cal.App.4th 1380, 1384-1388.)

Defendant's Request for Judicial Notice is **GRANTED**. (Evid. Code, § 452.)

Defendant's Objection to Plaintiffs' Surreply is **SUSTAINED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **People v. \$435.00
Case No. CV PT 08-1750**

Hearing Date: **August 20, 2009** **Department Fifteen** **9:00 a.m.**

The People are directed to appear and advise the Court whether they intend to file a petition for forfeiture and of any related criminal action. A judgment of forfeiture against the claimant requires, as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in section 11470, subdivision (f) which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notice of intent to seek forfeiture. (Health and Safety Code, § 11488.4, subd. (i)(3).)

TENTATIVE RULING

Case: **People v. Kirtlan**
Case No. CV CV 07-2279

Hearing Date: **August 20, 2009** **Department Fifteen** **9:00 a.m.**

Glen C. Hansen's unopposed motion to be relieved as counsel of record for defendants Robert Kirtlan and Deborah Kirtlan is **GRANTED**. (Cal. Rules of Court, rule 3.1362.) This order is not effective until a proof of service is filed with the Court showing service of a copy of the signed order on the clients. (Cal. Rules of Court, rule 3.1362(e).) Counsel shall promptly serve the clients with a copy of the signed order.

TENTATIVE RULING

Case: **Zochlinski v. Regents**
Case No. CV PT 07-9
Zochlinski v. Regents
Case No. CV PT 08-3413

Hearing Date: **August 20, 2009** **Department Fifteen** **9:00 a.m.**

Barbara Horwitz' motion to quash the subpoena directed to her is **GRANTED**. (Code Civ. Proc., § 1987.1; Cal. Rules of Court, rule 3.1306.) There has been no request by any of the petitioners to present oral testimony at the hearing nor a showing of good cause to permit such testimony. There has been no showing that any testimony sought is subject to judicial notice or relevant to the matters before the Court.

The Court treats the petitioners' motion to continue the August 27, 2009, hearing in Case No. CV PT 07-9 as a motion brought by Howard Zochlinski alone. Mr. Zochlinski may not represent his co-petitioners in this or any other legal matter. (Bus. & Prof. Code, §§ 6125 and 6126.) The "Delegation of Signing and Declaration" filed on February 25, 2009, in Case No. CV PT 07-9 is defective. (Code Civ. Proc., § 2015.5.) If the "delegation" is based on Probate Code section 4401, it is legally insufficient. There is no evidence showing that Jerold Theis has authorized Howard Zochlinski to sign a motion on Mr. Theis' behalf. (Code Civ. Proc., § 128.7, subd. (a).)

Howard Zochlinski's requests for a short continuance in Case Nos. CV PT 07-9 and CV PT 08-3413 are **GRANTED**. The parties are **DIRECTED TO APPEAR** and to be prepared to select one of the following continued hearing dates: September 10, 21, 24 and 28, 2009. The Court is not inclined to grant any other request for a continuance in these matters.